

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 00-0239
WITHHOLDING TAX
For Tax Periods: 1996- 1997

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Issue

Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the penalty.

Statement of Facts

The taxpayer is a riverboat casino. After a routine audit, the Indiana Department of Revenue assessed withholding tax, interest and penalty. The taxpayer protested the imposition of the penalty. Further facts will be provided as necessary.

Tax Administration-Penalty

Discussion

The taxpayer protests the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code

or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer hired several out-of-state contractors. Even though the applicable law and regulations require withholding when hiring out-of-state contractors, the taxpayer failed to do so. The taxpayer's breach of its duty to follow clear instructions in the law and regulations constitutes negligence. The ten percent negligence penalty was properly imposed.

Finding

Taxpayer's protest is denied